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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GUADALUPE OCHOA PEREZ,
Plaintiff,

vs.

IRS,
Defendant.

CASE NO. 12-CV-2026 BEN (NLS)

ORDER:

(1) DISMISSING ACTION

**(2) DENYING AS MOOT
MOTION TO PROCEED IN
FORMA PAUPERIS**

**(3) DENYING AS MOOT
MOTION TO APPOINT
COUNSEL**

[Docket Nos. 14, 16, 18]

On April 15, 2013, *pro se* Plaintiff Guadalupe Ochoa Perez filed a Second Amended Complaint against the Internal Revenue Service ("IRS"). (Docket No. 14.) Plaintiff also filed a Motion to Proceed *In Forma Pauperis* (Docket No. 16), and a Motion to Appoint Counsel (Docket No. 18). The Court decides the matters on the papers submitted. For the reasons outlined below, the Court **DISMISSES** the action and **DENIES** as moot the Motion to Proceed *In Forma Pauperis* and Motion to Appoint Counsel.

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BACKGROUND

In the Original Complaint and First Amended Complaint, Plaintiff alleged that his identity was stolen in 1991 and 1993, which caused the IRS to make an administrative error. Plaintiff also alleged that Plaintiff unsuccessfully sought assistance from a "tax advocate," H&R Block, and a law student, among others.

In the Second Amended Complaint, Plaintiff again alleges that his identity was stolen, although Plaintiff states that it was stolen in 1988 and 1991, rather than 1991 and 1993. (SAC at 1.) Plaintiff also alleges that he unsuccessfully sought assistance from a "tax advocate," H&R Block, and a law student. (*Id.* at 2.) Plaintiff requests that his Motion to Proceed *In Forma Pauperis* be granted because he cannot afford an attorney. (*Id.* at 1.)

DISCUSSION

I. *SUA SPONTE* SCREENING AND DISMISSAL

A complaint filed by any person proceeding, or seeking to proceed, *in forma pauperis* under 28 U.S.C. § 1915(a) is subject to mandatory *sua sponte* review and dismissal if the complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant immune from suit. 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000).

The legal sufficiency of a complaint is tested under Federal Rule of Civil Procedure 12(b)(6). *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Under Rule 12(b)(6), dismissal is appropriate if the complaint fails to state a facially plausible claim for relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007). That is, the complaint must state enough facts to raise a reasonable expectation that discovery will reveal evidence of the claim. *Id.* at 556. Dismissal is also appropriate when the complaint lacks a cognizable legal theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). The court must assume the truth of all factual allegations and construe them in the light most favorable to the plaintiff. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d

1 336, 337-38 (9th Cir. 1996). *Pro se* litigants are not “excused from knowing the most
 2 basic pleading requirements.” *Am. Ass’n of Naturopathic Physicians v. Hayhurst*, 227
 3 F.3d 1104, 1107 (9th Cir. 2000).

4 Here, Plaintiff does not cite any legal or factual basis for bringing a cause of
 5 action against the IRS. In addition, even considering Plaintiff’s previous allegations
 6 that the IRS made an administrative error, Plaintiff does not cite any facts in support
 7 of this allegation. The Second Amended Complaint is **DISMISSED** because it lacks
 8 a cognizable legal theory.

9 **II. MOTION TO PROCEED *IN FORMA PAUPERIS* AND MOTION TO APPOINT**
 10 **COUNSEL**

11 Because Plaintiff’s Second Amended Complaint is dismissed, Plaintiff’s Motion
 12 to Proceed *In Forma Pauperis* and Motion to Appoint Counsel are **DENIED** as moot.

13 **CONCLUSION**

14 For the reasons stated above, the Second Amended Complaint is **DISMISSED**
 15 without leave to amend. The Motion to Proceed *In Forma Pauperis* and Motion to
 16 Appoint Counsel are **DENIED** as moot.

17 **IT IS SO ORDERED.**

18 DATED: 6/29/13

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 20 HON. ROGER T. BENITEZ
 21 United States District Judge
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